

CITATION MANUAL
Interior Program

Pest Exclusion Branch
Plant Health and Pest Prevention Services
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Introduction

The California Food and Agricultural Code (FAC), Section 7 (Appendix 1) stipulates that individuals charged with enforcement of the Code have the authority of a public officer to make an arrest or follow Penal Code procedures for issuance of a citation (Notice to Appear) for violations of applicable code provisions.

It is the intent of this manual to provide Pest Exclusion biologists with standardized procedures for issuing citations. Appendices attached to this manual contain the applicable sections of the Food and Agricultural and Penal Codes. Also included are sections that describe the violations for which a citation can be issued. If necessary, these California codes can also be accessed online at <http://www.leginfo.ca.gov/calaw.html>.

Prior to implementation, the district manager and the county agricultural commissioner should meet and confer with the local sheriff and the appropriate court officials (magistrate, court clerk, district attorney, etc.) to finalize the procedures to be used for processing citations. These procedures will include predetermination of date and time arrangements for arraignment.

For purposes of uniformity, the Department and the County Agricultural Commissioners and Sealers Association (CACASA) have entered into a Memorandum of Understanding (MOU) regarding the level of seriousness that should be assigned to specific quarantine violations. This MOU is attached as Appendix 3 and should be provided to the court to assist in the determination of appropriate bail amounts.

The Citation Process

California law provides that any infraction or misdemeanor violation can be dealt with via a citation procedure. Under these circumstances, the person arrested ("arrestee"), or cited, signs a written promise to appear before the appropriate court and is then released. The arrestee is allowed to deposit the posted bail amount with the court in advance of the court date. If the arrestee does not appear when the case is called for arraignment, the bail is forfeited and no other action is taken.

A. Issuing and Completing the Citation

Once it is determined that a quarantine violation has occurred and a decision is made to issue a citation, the plant quarantine officer (arresting officer) should do the following:

- ◆ Describe to the arrestee being cited the actual quarantine violation and the citation process.
- ◆ Request some form of identification such as a driver's license, social security card, etc. This information will be needed to complete the citation form (name, age, residence, and physical description). If identification is presented in a wallet or case it should be removed for viewing by the arresting officer. If the person refuses to provide or does not have any identification, a peace officer must be called.
- ◆ The citation should be completed as follows (a sample citation can be found in Appendix 4):

1. Date, time (a.m. or p.m.), day of week.
2. Full name (first, middle, and last).
3. Residence address and city.
4. Business address and city (truck drivers only).
5. License number, state, and date of birth.
6. Physical description including sex, hair and eye color, height, weight, etc.
7. Employer (if applicable).
8. Vehicle license number, state; business license number (if applicable).
9. Infraction or misdemeanor, booking indication.
10. Violation summary and code reference.
11. Location where offense was committed.
12. Offense not committed in officer's presence section will not be used.
13. Signature of issuing officer and badge number.
14. Name of arresting officer and vacation dates.
15. Arrestee's signature (to be requested following completion of the citation form).
16. Municipal court address.
17. City, division, and telephone number.
18. The date set for appearance. This date shall be at least ten (10) working days from the date of the citation.

Care must be taken when completing this form. Mistakes must have a line drawn through them completely, the information re-entered, and the area must be initialed by the arresting officer.

B. Obtaining the Arrestee's Signature

Once the citation has been completed, the identification used is returned and the arrestee is asked to sign the form. It should be explained that signing the form is merely a promise to appear, not an admission of guilt. If the arrestee will not sign the citation, a peace officer must be contacted for assistance or arrest if necessary. If this is not practical, the available pertinent information should be recorded and reported to the district manager. If the situation warrants further action, the district manager should contact the district attorney and request a warrant for arrest.

Questions regarding the assignment of bail should be referred to the court. Most courts will provide this information by telephone to expedite closure. Additional procedural information can be found on the reverse side of the citation form. Such information includes the following:

- ◆ Willful failure to appear as promised is a separate violation which is punishable by arrest and 6 months in jail and/or a \$500.00 fine, regardless of the disposition of the original charge.
- ◆ The clerk of the court is authorized to accept a deposit of bail to guarantee appearance. For some offenses the court may accept this deposit by mail and permit such deposit to be forfeited in lieu of appearance.

The arrestee is then provided with the "defendant's copy" of the citation and allowed to leave.

C. Completing the Citation Investigation Report (Form 66-049, Appendix 4)

At the same time the citation is issued an investigation report must also be completed for every citation issued. Copies of this report are to be distributed as follows:

- ◆ The original shall be attached to and mailed with the citation to the appropriate court.
- ◆ The "defendant's copy" should be given to the arrestee.
- ◆ A copy should be retained by the arresting officer's file.
- ◆ If necessary, a copy should be forwarded to the prosecuting attorney's office.
- ◆ A copy should be sent to Pest Exclusion headquarters.

D. Processing the Citation Form

If the charge is an infraction and/or if the arresting officer is previously directed by the prosecuting attorney to do so, as soon as is practical the completed citation must be filed with the appropriate magistrate. In all other cases, the citation form, and all other reports in support of the charge or charges, should be filed with the prosecuting attorney. In either case, the magistrate will then set the amount of bail. All bail funds collected are deposited into the county treasury. No warrant for arrest shall be issued for a person who has signed a written promise to appear unless that person has failed to appear and failed to deposit the assessed bail amount.

It is important to note that anyone, including the arresting officer, who alters, modifies, or destroys the remaining original or any copy of the citation before it is deposited with the magistrate is guilty of a misdemeanor. If a mistake is found after distributing copies of the citation, correction recommendations should be forwarded to the court clerk.

If at any time the arresting officer determines that the citation should be dismissed, a written recommendation for dismissal should be sent to the magistrate and filed with the court.

Approximately two weeks after the notice to appear date has passed, the court clerk should be contacted to learn the disposition of the citation. This information should be forwarded to the district and headquarter's office for recordkeeping purposes.

•**PERTINENT CALIFORNIA FOOD AND AGRICULTURAL CODE EXCERPTS:**

Continuation of existing law; protection of prior rights

4. The provisions of this code, insofar as they are substantially the same as existing law, are restatements and continuations of existing law, and not new enactments. The enactment of this code shall not impair any privilege granted or right acquired under any of the laws of this state prior to the date it takes effect.

Enforcement; arrests; civil liability; service of process

7. (a) Any person in whom the enforcement of any provision of this code is vested shall have the authority, as a public officer, to arrest, without a warrant, another person whenever such officer has reasonable cause to believe that the person to be arrested has, in his presence, violated any provision of this code, the violation of which is declared to be a public offense. If such violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated a provision of this code which is declared to be a felony, although no felony has in fact been committed, he may make an arrest although the violation or suspected violation did not occur in his presence.

In any case in which an arrest is made pursuant to this authority for an offense declared to be a misdemeanor or an infraction, the arresting officer may, instead of taking the person arrested before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code, unless the arrested person demands to be taken before a magistrate. The provisions of such chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the arresting officer, at the time of such arrest, had reasonable cause to believe was lawful. No such officer shall be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(c) Any person in whom the enforcement of any provision of this code is vested may serve all processes and notices throughout the state; provided, that county employees authorized to enforce the provisions of this code are authorized to serve processes and notices only within the boundaries of the county which employs them.

8. The district attorney of any county in which a violation of any provision of this code occurs shall, upon request of any enforcing officer or other interested person, prosecute such violation. The prosecutor of any municipality has concurrent jurisdiction as to any violation which is committed within his territorial jurisdiction.

9. Unless a different penalty is expressly provided, a violation of any provision of this code is a misdemeanor.***

• Portions of the code sections have been omitted due to irrelevance. Omissions in the code will be indicated by the following: "****"

General provisions

5027. Unless otherwise expressly provided, a violation of any provision of this division is a **misdemeanor**.

5028. (a) Any person who intentionally violates any state or federal quarantine law or regulation is liable civilly as provided in Sections 5310 and 5311, and subdivision (c) of this section, and is subject to criminal or civil penalties, or both, pursuant to the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7) of the Business and Professions Code.

(b) Either of the following factual findings shall constitute prima facie evidence that a violation of any state or federal quarantine law or regulation pursuant to subdivision (a) is an intentional violation:

(1) A violation of Section 6401 and possession of a shipment, plant, or thing that is regulated by a state or federal quarantine law or regulation and that has not been inspected and released by a federal, state, or county quarantine official in either of the following circumstances:

(A) The plant or thing is found concealed from view.

(B) The person in possession has been found repeatedly in possession of those plants or things.

(2) A combination of findings showing that a person is in possession of a shipment, plant, or thing that is regulated by a state or federal quarantine law or regulation and that was fraudulently or secretly brought into the state and the person in possession is engaged in a business or other commercial activity where a reasonable expectation exists that the person was aware of the state or federal quarantine laws or regulations.

5031. It is **unlawful** for any person to knowingly falsify, misrepresent, or cause to be falsified or misrepresented, any information in a record intended to show proof of ownership.

Certification of Plant Shipments

5208. It is **unlawful** for any person to alter, deface, or wrongfully use a certificate issued pursuant to any provision of this division.

5209. (a) Except as provided in subdivision (b), any violation of this chapter is an **infraction** punishable by a fine of seventy-five dollars (\$75) for the first offense and is a **misdemeanor** for a second or subsequent offense within three years of a prior conviction of a violation of this chapter.

(b) (1) Any use by any person of a false or invalid certificate for the purpose of certification pursuant to this chapter is a **misdemeanor**.

(2) For the purpose of this section, "false certificate" means a document, as defined in Section 5201, that has not been issued by a commissioner, deputy commissioner, or inspector.

(3) For the purposes of this section, "invalid certificate" means a document, as defined in Section 5201, that is based upon false information supplied to the commissioner, deputy commissioner, or inspector which is essential to the issuance of the certificate.

Quarantine Regulations and Inspection Stations

5306. (a) It is **unlawful** for any person to refuse to comply with any quarantine regulation which is established by the director pursuant to this division.

(b) It is **unlawful** for any person to possess, propagate, plant, process, sell, or take any other action with regard to a plant or thing subject to a quarantine which has been imported or moved in violation of the quarantine.

(c) Notwithstanding Section 5309, any violation of this section is a **misdemeanor**.

5309. Any violation of this chapter by any person, or an agent of any person, is an **infraction**, punishable by a fine of not more than one thousand dollars (\$1,000) for the first offense. For a second or subsequent offense within three years of a prior conviction of a violation of this chapter, the violation is punishable as a **misdemeanor**.

5344. (a) It is **unlawful** for the operator of any vehicle to fail to stop the vehicle at an inspection station or to willfully avoid an inspection station. It is also unlawful for the operator to fail to stop either upon demand of a clearly identified plant quarantine officer or upon demand of an officer of the California Highway Patrol, when the officer orders the operator to stop for the purpose of determining whether any quarantine which is established pursuant to any provision of this division is being violated.

(b) Notwithstanding Section 5309, a violation of this section is a **misdemeanor** and grounds for the vehicle to be stopped for inspection.

5345. It is **unlawful** for any person to operate upon any highway in this state any vehicle which, in violation of Section 5344, was not stopped as required by that section, if the person who is operating such vehicle knows of such violation of Section 5344. The violation of this section continues unless and until one of the following occurs:

(a) A period of 24 hours has elapsed following the violation of Section 5344.

(b) The operator who violated Section 5344 has been apprehended and the vehicle which is involved has been inspected and released from quarantine by any authorized state plant quarantine officer. An operator who is so apprehended does not violate this section by reason of operating the vehicle en route to the closest inspection station immediately following his apprehension for violation of Section 5344, nor does any other person, who operates the vehicle for such purpose, violate this section.

5346. (a) It is **unlawful** for any person to conceal any plant from any plant quarantine officer or to fail to present it or any quarantined article for inspection at the request of such officer.

(b) It is **unlawful** to move into California any outdoor household article from a federally regulated gypsy moth area unless accompanied by certification that the article has been inspected and does not contain gypsy moth egg masses. The director may adopt regulations to specify the type of certification and inspection required as necessary to carry out this section.

5348. Plant quarantine officers, and officers of the California Highway Patrol, are authorized to cite persons for any violation of this article.

5349. (a) It is unlawful for the operator of a vehicle to intentionally route the vehicle and travel on that route in order to prevent the vehicle from passing through a plant quarantine inspection station.

(b) Notwithstanding Section 5309, a violation of this section is a misdemeanor.

Abatement, Generally

5402. It is **unlawful** for any person to maintain such a public nuisance. The remedies which are provided by this article are in addition to any other remedy by way of abatement which is provided in this division.

Special Quarantine, Control and Abatement Methods

5704. It is **unlawful** for any person to move any plant or other host or possible carrier from the premises on which a hold notice has been issued, except under the written permission of the director or commissioner and in accordance with the conditions which are stated in the written permission.

5705. (a) The director or commissioner may enter into compliance agreements with any person which provide for the movement of hosts or other possible carriers of any pest from one area of the state to another. These agreements shall establish the treatment, harvesting, packing, and handling requirements that may be necessary to assure that the hosts or carriers are not infested.

(b) Violation of the treatment, harvesting, packing, or handling terms of a compliance agreement is **unlawful**.

5742. Except as otherwise provided in Section 5744, it is **unlawful** for any person to ship or move any used appliances unless there is furnished to the commissioner of the county of destination such proof as he may require that the appliances either:

(a) Have not been exposed to infestation or infection by any pests.

(b) Have been treated immediately prior to shipment or movement in the manner which is designated by the director.

5783. It is **unlawful** for any person to plant, grow, cultivate, or maintain any host which is described in any regulation of the director that establishes a host-free period or host-free district, within the host-free period or host-free district after notice of the host-free period or host-free district.

5803. It is **unlawful** for any person to bud, graft, or otherwise propagate or grow any fruit or nut tree or vine in violation of any regulations which are adopted pursuant to this article or to sell as nursery stock any plant which is so produced.

5826. It is **unlawful** for any person to alter, deface, or misuse any statement of registry, certificate, label, or tag which is issued pursuant to this article. ***

Specific Control and Abatement Provisions

6048. (a) The plant hydrilla (*Hydrilla verticillata*) is a noxious aquatic weed not native to the State of California. The Legislature hereby declares that the further introduction and spread of this serious aquatic weed pest would be detrimental to the state, causing irreparable damage to the agricultural industry and recreational use of streams, lakes, and waterways and further that the eradication of this aquatic weed pest is essential to the preservation of the environment.

(b) It is **unlawful** to produce, propagate, harvest, possess, sell, or distribute hydrilla as such or incidental to the sale of fish, aquatic plants, or other hosts or possible carriers of hydrilla. The director may adopt quarantine or other regulations which prohibit the importation of hydrilla. **Any violation of the regulations or of this section is an infraction punishable by a fine of not more than seventy-five dollars (\$75) for the first offense and is a misdemeanor for a second or subsequent offense within three years of a prior conviction of a violation of this section or of the regulations.** These penalty provisions do not preclude civil action as provided in Article 2 (commencing with Section 5021) of Chapter 1.

Shipments, Generally

6301. If any article is found to have been transported into this state from any other country or state, or territory or district of the United States, in violation of any provision of a quarantine that is established by the Secretary of Agriculture of the United States, the article is subject to seizure, destruction, or other disposition to the same extent and in the same manner as if the article had originated in this state and was in violation of a provision of this division.

6301.1. (a) The secretary shall adopt, by reference, by regulation, those federal quarantine regulations and any subsequent amendments in Parts 301 to 369, inclusive, of Title 7 of the Code of Federal Regulations. Civil and criminal penalties applicable to a violation of those federal quarantine regulations may be imposed by the secretary and other duly authorized plant quarantine officers in conformity with that other law.

6303. (a) It is **unlawful** for any person, except under written permission from a plant quarantine officer or under his specific direction, to move any lot or shipment of plants or other things to which a warning tag or notice has been affixed pursuant to this division, or to remove, alter, destroy, deface, or mutilate any such warning tag or notice.

(b) If any shipment of plants or things is allowed to transit the state or transit to a given destination county under a quarantine warning-hold notice, the shipment of plants or things shall not be diverted to another destination without the written permission of the director or the commissioner of the destination county.

(c) Diversion of a shipment as described in subdivision (b) is **unlawful**.

(d) If a shipment of plants or things requires a state or county plant quarantine officer to be present at the destination to supervise the unloading, inspection, or treatment of a quarantine shipment, the director or commissioner, as the case may be, may charge the shipper or receiver a service fee for the cost of the services. Service fees shall be determined based on the director or

commissioner's costs for the services rendered.

6304. It is **unlawful** for any person to import into the state any English or Australian wild rabbit, flying fox, mongoose, or any other form of animal life which is detrimental to agriculture. Any such animal shall be refused entry and shall be immediately destroyed or shipped out of the state within 48 hours at the option and expense of the owner or bailee of the animal.

6305. It is **unlawful** for any person to willfully import into, or ship or transport within, the state any live insect or any pest as such, unless the shipment or transportation and subsequent use and handling is authorized prior to shipment under written permit and the regulations of the director or the United States Department of Agriculture, except the following:

- (a) Honey bees of the species of *Apis mellifera*.
- (b) Weeds for the purpose of identification.
- (c) Beneficial or useful insects of common occurrence in the state.
- (d) Insects or other organisms of public health or animal health interest, which are not plant pests, when imported, shipped, or transported by any governmental public health agency.

Any shipment which is not authorized by this section shall be immediately destroyed unless it is determined by the inspecting officer that the nature of the contents of the shipment is such that no damage can be caused to agriculture in this state through its shipment out of the state or return of the shipment to the point of origin. In such case, the shipment out of the state or the return of the shipment to point of origin shall be allowed at the expense of the owner or bailee of the shipment within the time which is specified by the inspecting officer.

6321. It is **unlawful** for any person to import into, or transport thereafter within, the state any plant, fruit, or vegetable which is known to be, or may become, a host of any species of the fruit fly family Tephritidae from any territory, state, or district where such species of Tephritidae is known to exist except under permit and regulation of the director if the director finds that the species is harmless to agriculture or that an effective treatment of the hosts eliminates fruit fly risk.

Interstate Shipments

6401. It is **unlawful** for any person to transport, receive, or import into the state any plant or any thing against which a quarantine has been established, or any plant, unless he does both of the following:

- (a) Notifies the director or the commissioner of the county in which the plant or thing is received, of the arrival of the plant or thing immediately after its arrival.
- (b) Holds the plant, or thing for immediate inspection by the director or commissioner, without unnecessarily moving it, or placing it where it may be harmful.

6405. (a) Any certificate that has been altered, defaced, or improperly completed or changed is void.

(b) It shall be **unlawful** for any person to do any of the following:

- (1) Alter, deface, or otherwise falsify or change, a certificate that is attached to any plant shipment or other thing entering the state.
- (2) Use, or have in his or her possession, any certificate that has been altered, defaced, or otherwise falsified or changed.

(c) Transport, receive, or possess any plant material represented by a certificate.
(c) For purposes of this section, "certificate" means a certificate issued pursuant to a quarantine regulation.

6461. It is **unlawful** to ship or transport any plant or any other thing into this state which is infested with any pest which has been listed, by the director, as detrimental to agriculture in this state.

Intrastate Shipments

6501. Except as otherwise provided in Section 6502, 6504, 6506, or 6924, it is **unlawful** for any person to receive or bring into any county or locality of the state from another county or locality within the state any nursery stock, or any other plant, appliance, or thing subject to a federal or state quarantine or which the commissioner or the director considers and designates to be liable to be infected or infested with any pest, unless the person does all of the following:

- (a) Notifies the commissioner of the arrival of the article immediately after its arrival.
- (b) Holds it for immediate inspection by the commissioner, without unnecessarily moving or placing the article where it may be harmful.
- (c) Legibly marks the shipment in a conspicuous manner and place with all of the following:
 - (1) The name and address of the shipper or owner.
 - (2) The name of the person to whom the shipment is forwarded or shipped or the name of his or her agent.
 - (3) The name of the county where the contents of the shipment were grown.
 - (4) A statement of its contents.

Nursery Stock, Licenses

6721. It is **unlawful**, for any person, except a person who is expressly exempt pursuant to Section 6742 or 6743, to sell any nursery stock unless such person holds a valid license which is issued pursuant to this chapter.

Other Regulations

6921. It is **unlawful** for any person to ship, or cause to be shipped, any nursery stock from one county or locality of the state to another county or locality within the state unless he has marked upon such nursery stock in a conspicuous manner and place both of the following:

- (a) The name and address of the shipper, owner, or person that is forwarding the nursery stock.
 - (b) The name of the person, or his agent, to whom the nursery stock is forwarded.
- 6922.** Except as otherwise provided in Sections 6502, 6504, 6505, 6506, and 6924, it is **unlawful** for any person to sell, deliver, or transport any nursery stock from one county to another county within the state unless he has affixed to such nursery stock in a conspicuous place one of the following which is issued by the commissioner of the county of origin:

- (a) A shipping permit that warns that inspection at destination is required.
- (b) A valid nursery stock certificate.

6925. It is **unlawful** for any person to move, any nursery stock from one locality to another locality within the same county under conditions provided in Section 6926 or from one county to another county within the state, except nursery stock which is accompanied by a valid nursery stock certificate, unless such person forwards, at or prior to the time of shipment, to the commissioner who has jurisdiction at the destination, a manifest which states all of the following:

- (a) Name and address of the shipper.
- (b) Name and address of the person to whom the shipment is being forwarded.
- (c) Name and quantity of each kind of plant which is contained in the shipment.
- (d) Name of the locality where each kind of nursery stock was grown.
- (e) Name of the carrier by which the shipment is being transported, whether by freight, express, mail, truck, boat, airplane, or otherwise.

The requirement for a manifest does not apply to any shipment of seeds.

6926. It is **unlawful** to move nursery stock from one locality to another locality within the same county without forwarding a manifest as provided in Section 6925 if the commissioner has required such nursery stock to be held for inspection as provided in Section 6505.

6927. It is **unlawful** for any person to alter any shipping permit or nursery stock certificate or to use it in any manner other than as provided in this chapter.

6970. It is **unlawful** for any person, whose right to use any nursery stock certificate or shipping permit has been revoked or suspended, to refuse to surrender to the commissioner, upon demand, any unused certificate or shipping permit.

Weeds

7206. It is **unlawful** for any person to sell, distribute, or transport into, or within, any weed-free area any seed of any noxious weed of which the area has been declared to be practically free.

7207. It is **unlawful** for any person that owns or possesses any land within any weed-free area to knowingly permit any noxious weed of which the area has been declared to be practically free, to mature upon his land and disseminate its seed or to propagate itself by other means upon such land, or on the land of another.

Pest Seeds

7501. It is **unlawful** for any person to disseminate the seed of any pest within this state. ***

Certificates

7571. Except as otherwise provided in Section 7572, it is **unlawful** for any person to move any seed screenings or cleanings from crop seed from the place where they may be unless one of the following first has been done:

(a) The seed screenings or cleanings have been inspected by the commissioner and found to be free from the seed of any pest.

(b) The seed screenings or cleanings have been processed under the supervision of, and to the satisfaction of, the commissioner by grinding, or otherwise, to render the seed of any pest incapable of reproduction.

Appendix 2

•PENAL CODE SECTIONS 853.5-853.85

Citations for Misdemeanors

853.5. Except as otherwise provided by law, in any case in which a person is arrested for an offense declared to be an infraction, the person may be released according to the procedures set forth by this chapter for the release of persons arrested for an offense declared to be a misdemeanor. In all cases, except as specified in Sections 40302, 40303, 40305, and 40305.5 of the Vehicle Code, in which a person is arrested for an **infraction**, a peace officer shall only require the arrestee to present his driver's license or other satisfactory evidence of his identity for examination and to sign a **written promise to appear**. If the arrestee does not have a driver's license or other satisfactory evidence of identity in his or her possession, the officer may require the arrestee to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the promise to appear. This thumbprint or fingerprint shall not be used to create a data base. Only if the arrestee refuses to sign a written promise, has no satisfactory identification, or refuses to provide a thumbprint or fingerprint may the arrestee be taken into custody.

853.6. (a) In any case in which a person is arrested for an offense declared to be a **misdemeanor**, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the person is released, the officer or superior shall prepare in duplicate a **written notice to appear** in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or superior shall prepare a written notice to appear in a court.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the promise to appear. This thumbprint or fingerprint shall not be used to create a data base. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

• *Portions of the code sections have been omitted due to irrelevance. Omissions in the code will be indicated by the following: "****"

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an **infraction**.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the **misdemeanor** charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the

arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any **misdemeanor** offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a **misdemeanor**, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a **misdemeanor**.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law

enforcement agency be grounds for dismissal.

(k) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

853.6a. (a) Except as provided in subdivision (b), if the person arrested appears to be under the age of 18 years, and the arrest is for a violation listed in Section 256 of the Welfare and Institutions Code, other than an offense involving a firearm, the notice under Section 853.6 shall instead provide that the person shall appear before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, and the officer shall instead, as soon as practicable, file the duplicate notice with the prosecuting attorney unless the prosecuting attorney directs the officer to file the duplicate notice with the clerk of the juvenile court, the juvenile court referee, or the juvenile traffic hearing officer. If the notice is filed with the prosecuting attorney, within 48 hours before the date specified on the notice to appear, the prosecutor, within his or her discretion, may initiate proceedings by filing the notice or a formal petition with the clerk of the juvenile court, or the juvenile court referee or juvenile traffic hearing officer, before whom the person is required to appear by the notice.

(b) A juvenile court may exercise the option of not requiring a mandatory appearance of the juvenile before the court for **infractions** contained in the Vehicle Code, except those related to drivers' licenses as specified in Division 6 (commencing with Section 12500), those related to financial responsibility as specified in Division 7 (commencing with Section 16000), speeding violations as specified in Division 11 (commencing with Section 21000) where the speed limit was violated by 15 or more miles per hour, and those involving the use or possession of alcoholic beverages as specified in Division 11 (commencing with Section 12500).

(c) In counties where an Expedited Youth Accountability Program is operative, as established under Section 660.5 of the Welfare and Institutions Code, a peace officer may issue a citation and written promise to appear in juvenile court or record the minor's refusal to sign the promise to appear and serve notice to appear in juvenile court, according to the requirements and procedures provided in that section.

(d) Nothing in this section shall be construed to limit the discretion of a peace officer or other person with the authority to enforce laws pertaining to juveniles to take the minor into custody pursuant to Article 15 (commencing with Section 625) of the Welfare and Institutions Code.

853.7. Any person who willfully violates his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court is guilty of a **misdemeanor**, regardless of the disposition of the charge upon which he or she was originally arrested.

853.7a. (a) In addition to the fees authorized or required by any other provision of law, a county may, by resolution of the board of supervisors, require the courts of that county to impose an assessment of seven dollars (\$7) upon every person who violates his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail, or who otherwise fails to comply with any valid court order for a violation of any provision of this code or local ordinance adopted pursuant to this code. This assessment shall apply whether or not a violation of Section 853.7 is concurrently charged or a warrant of arrest is issued pursuant to Section 853.8.

(b) The clerk of the court shall deposit the amounts collected under this section in the county treasury. All money so deposited shall be used exclusively for the development and operation of an automated county warrant system.

853.8. When a person signs a written promise to appear at the time and place specified in the written promise to appear and has not posted bail as provided in Section 853.6, the magistrate shall issue and have delivered for execution a warrant for his or her arrest within 20 days after his or her failure to appear as promised or within 20 days after his or her failure to appear after a lawfully granted continuance of his or her promise to appear.

853.85. This chapter shall not apply in any case where a person is arrested for an offense declared to be a felony.

Appendix 3

MEMORANDUM OF UNDERSTANDING

California Department of Food and Agriculture
and the
California Agricultural Commissioners
and Sealers Association

POLICY REGARDING ADMINISTRATIVE LEVY OF CIVIL PENALTIES PURSUANT TO DIVISION 4 OF THE FOOD AND AGRICULTURAL CODE

It is unlawful for any person to refuse to comply with any quarantine regulation established to carry out the provisions of the Food and Agricultural Code (Code). In addition to any other applicable penalties, any person who violates any requirement of Division 4 of the Code, or any regulation adopted pursuant to that Division, may be prosecuted civilly in any appropriate court in this State. In lieu of civil action, the Secretary or the Commissioner may levy a civil penalty not to exceed \$2,500 for each violation.

A mutual objective of the California Department of Food and Agriculture and the California Agricultural Commissioners and Sealers Association is the uniform, fair and equitable enforcement of all laws for which each agency is responsible. This memorandum of understanding (MOU) will serve as a policy and set of guidelines for the administrative levy of civil penalties in this area.

The following guidelines categorize, by severity, the unlawful sections of the Food and Agricultural Code. They are provided to promote uniformity in the assessment of penalties for quarantine and other violations. They do not preempt the need for state officials or individual counties to analyze quarantine violations on an individual basis and to levy appropriate civil penalties as determined by the facts of the case.

I. AUTHORITY

A summary of applicable authority for the administration of civil penalties can be found in the following cited sections of the Food and Agricultural Code. For purposes of enforcement in all civil actions, the provisions of the Code shall be liberally interpreted (Food and Agricultural Code, Section 3). The due process provisions of Section 5311 must be followed.

Division 4. Authority exists under Section 5311 to levy a civil penalty up to \$2,500 for any violation of any requirement of this division except as provided in Part 1, Chapter 8, Article 5 (commencing with Section 5781) relating to host-free periods and districts. Those sections which specifically provide for civil penalties are:

- A. Section 5028 - Maximum civil liability of \$25,000 for causing an infestation.
- B. Section 5311 - In lieu of civil action, civil penalties, not exceeding \$2,500, may be levied for each violation of a regulation of this division.

- C. Section 5341.5 - Maximum civil liability of \$1,000 for failure to obtain a required certificate of inspection

II. VIOLATION CATEGORIES

The degree of "seriousness" of any offense shall be determined based on the degree of actual or potential damage which occurred, or could have occurred, as a consequence of the violation.

Violations may be determined to be minor, moderate, or serious. This MOU defines each of these categories and gives examples for each. However, the final decision on the severity of any violation must be made on a case-by-case basis.

- A. Minor Violations - Violations which are primarily procedural and result in no or minimal adverse impact on the environment, on the agricultural industry or on enforcement. The appropriate penalty range is \$50 to \$750.

Examples of minor violations include: first time violations of a procedural nature from someone with little or no experience with quarantines, or violations of public nuisance standards.

Section 6155-6157 Caprifig violations.

- B. Moderate Violations - Violations which are repeat minor violations, or those which cause significant damage, undermine enforcement, or pose a reasonable possibility of harming the agricultural industry or the environment. The appropriate penalty range is \$750 to \$1,500.

Examples of moderate violations include: repeat minor violations or first time violations which might have an impact on the agricultural industry or the environment.

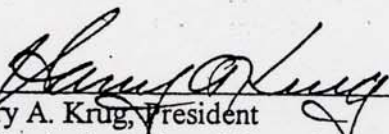
| | |
|-------------------|---|
| Section 5307 | Public servant's failure to report |
| Section 6304-6305 | Prohibited exotic animal importation without permit |
| Section 6925 | Nursery stock movement |
| Section 7207 | Noxious weed violation |
| Section 7501 | Unlawful seed dissemination |

- C. Serious violations - Violations which are repeat moderate violations, those which preclude or significantly interfere with enforcement, or those which cause major harm to the agricultural industry or the environment. The appropriate penalty range is \$1,500 to \$2,500. However, there may be cases where criminal and/or civil prosecution may be more appropriate. The decision as to how to proceed should be made jointly by the Secretary and the Commissioner.

January 8, 1997

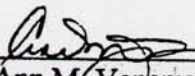
Examples of serious violations include: repeat moderate violations, unauthorized certificate use, failure to hold for inspection, and deliberate circumvention of quarantine laws. These might include violations of the following sections:

| | |
|----------------|--|
| Section 5208 | Certificate violations |
| Section 5306 | Refusal to comply with quarantine regulations |
| Section 5344-6 | Failure to stop and declare at a border station |
| Section 5349 | Deliberately bypassing a border station |
| Section 5402 | Public nuisance violation |
| Section 5553 | Abandonment of a public nuisance |
| Section 5704-5 | Movement under hold, compliance agreement violations |
| Section 5803 | Nursery stock propagation violation |
| Section 5826 | Nursery stock certificate misuse |
| Section 6048 | Hydrilla violations |
| Section 6303-5 | Quarantine shipment violations |
| Section 6321 | Fruit fly host importation prohibition |
| Section 6401 | Interstate shipment quarantine violations |
| Section 6721 | Nursery stock license requirement |
| Section 6921-3 | General nursery stock requirements |
| Section 6926-7 | Nursery stock manifest requirement |
| Section 6970 | Yielding of nursery stock permit |
| Section 7206-7 | Harboring of noxious weeds |
| Section 7501 | Pest seed dissemination |
| Section 7534 | Seed certificate misuse |


Harry A. Krug, President
California Agricultural Commissioners
and Sealers Association

2/5/97

Date


Ann M. Veneman, Secretary
California Department of Food and
Agriculture

1/28/97

Date

California Department of Food and Agriculture
Division of Plant Industry

AGENCY _____

NOTICE TO APPEAR No.

DATE _____ 19____ TIME _____ M DAY OF WEEK _____
NAME (FIRST, MIDDLE, LAST) _____

RESIDENCE ADDRESS _____ CITY _____

BUSINESS ADDRESS _____ CITY _____

DRIVER'S LICENSE NO. _____ STATE _____ BIRTHDATE _____

SEX _____ HAIR _____ EYES _____ HEIGHT _____ WEIGHT _____ OTHER DESC. _____

EMPLOYED BY _____ OCCUPATION _____

VEHICLE LICENSE NO. _____ STATE _____ BUSINESS LICENSE NO. _____

OFFENSE(S) _____ CODE _____ SECTION _____ DESCRIPTION OF OFFENSE _____

INFRACTION ☐ MISDEMEANOR ☐ BOOKING REQUIRED ☐

LOCATION OFFENSE(S) COMMITTED _____

☐ OFFENSE(S) NOT COMMITTED IN MY PRESENCE, CERTIFIED ON INFORMATION AND BELIEF.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON THE DATE SHOWN ABOVE AT
ISSUING OFFICER _____

(PLACE)

CALIF. BADGE NO. _____

NAME OF ARRESTING OFFICER —IF DIFFERENT FROM ABOVE _____ VACATION DATES TO _____

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE
TIME AND PLACE CHECKED BELOW.

X SIGNATURE _____

BEFORE A JUDGE OR A CLERK OF THE MUNICIPAL OR JUSTICE COURT

ADDRESS _____

DIVISION _____

CITY _____ TELEPHONE NO. _____

ON THE _____ DAY OF _____ 19____ AT _____ M.
FORM APPROVED BY THE JUDICIAL COUNCIL OF CALIFORNIA SEE REVERSE SIDE
REV. 11-10-69 P.C. 853.9
66-050 EST (12/83)

COURT COPY

85 94266

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
PEST EXCLUSION

- CITATION INVESTIGATION REPORT -

| | | | | | |
|--|--|---------|-------------------|---------------|--|
| DATE: | | COUNTY: | | CITATION NO.: | |
| NAME: | | | PRIOR VIOLATIONS: | | |
| HOME ADDRESS: | | | | TELEPHONE: | |
| BUSINESS ADDRESS: | | | | TELEPHONE: | |
| OFFICER'S NAME: | | | TITLE: | | |
| STATION: | | | | TELEPHONE: | |
| PERMANENT DUTY STATION | | | | TELEPHONE: | |
| WITNESS' NAME: | | | TITLE: | | |
| STATION: | | | | TELEPHONE: | |
| PERMANENT DUTY STATION: | | | | TELEPHONE: | |
| COMMODITIES/APPLIANCES: | | | | | |
| EVIDENCE: | | | | | |
| CODES: <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div><input type="checkbox"/> No. 5306 FAC</div><div><input type="checkbox"/> No. 5346 (a) FAC</div><div><input type="checkbox"/> No. 5346 (b) FAC</div><div><input type="checkbox"/> No. _____</div></div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div><input type="checkbox"/> No. 5344 FAC</div><div><input type="checkbox"/> No. 6305 FAC</div><div><input type="checkbox"/> No. _____</div><div><input type="checkbox"/> No. _____</div></div> | | | | | |
| NARRATIVE: | | | | | |
| (Use reverse side for additional comments) | | | | | |
| SIGNATURE: | | | | DATE: | |